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**REVIEW OF 16 TAC §25.53 RELATING § PUBLIC UTILITY COMMISSION
TO ELECTRIC SERVICE §
EMERGENCY OPERATIONS PLANS § OF TEXAS**

**TEXAS-NEW MEXICO POWER COMPANY’S INITIAL COMMENTS ON PROPOSAL
FOR PUBLICATION OF REPEAL OF 16 TAC §25.53**

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**TEXAS-NEW MEXICO POWER COMPANY’S INITIAL COMMENTS ON PROPOSAL
FOR PUBLICATION OF REPEAL OF 16 TAC §25.53**

TEXAS-NEW MEXICO POWER COMPANY (“TNMP”) submits the following Initial Comments to the Proposal for Publication of Repeal of 16 TAC §25.53. These responses are timely filed on January 4, 2022.

I. GENERAL COMMENTS

TNMP appreciates the Commission Staff’s preparation of the proposed revised 16 TAC § 25.53 implementing Senate Bill 3 amending PURA §186.007 relating to Public Utility Commission Weather Emergency Preparedness Reports. TNMP also supports the need to clearly demonstrate the sufficiency of a utility’s emergency operating plan (“EOP”). However, TNMP respectfully believes that public transparency must be tempered with securing sensitive or critical information regarding a utility’s electric system.

For instance, revised 16 TAC § 25.53 will require electric utilities to file an entire EOP with the Commission and outlines the required content and new annexes of an EOP. Instead, TNMP urges the Commission to retain the current rules requirement to submit comprehensive summaries of their EOPs to the Commission. Certainly, existing EOP summaries would be updated for any new requirements, such as the proposed cyber security annex, that are approved in this rulemaking. However, the existing use of summaries permit a utility to inform the Commission of its emergency operations without risking disclosure of sensitive or critical information either directly or due to a subsequent open records request to the Commission. Ultimately, TNMP supports the Commission’s necessary oversight of emergency preparedness but urges the Commission to balance the security of sensitive system and operation information. Finally, attached as Exhibit A is TNMP’s Executive Summary.

II. TNMP SPECIFIC COMMENTS

A. Definitions – Proposed 16 TAC § 25.53(b)

1) § 25.53(b)(3) – Definition of Emergency

TNMP believes the proposed definition of “Emergency” should be refined. As drafted, the definition is not limited nor clarified by the impact of the risk involved. Consequently, the proposed definition is not limited to significant incidents, but encompasses instances where the “credible risk” of service interruption is quite small. TNMP, and other utilities, have typically instituted an EOP during, or anticipating, significant events such as a hurricane. Small, localized service interruptions are restored outside of the EOP through a utility’s standard service restoration procedures. In fact, “system emergency” under 16 TAC § 25.5 (128) is a “*condition on a utility’s system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.*” TNMP believes that EOPs should continue to only apply to such significant events. Therefore, consistent with historical practice, TNMP suggests that EOPs be implemented for a “system emergency” per § 25.5(128). TNMP suggests that the proposed definition of “Emergency” be revised as follows:

- (3) Emergency -- ~~any incident resulting from an imminent hazard or threat that endangers life or property or presents credible risk to the continuity of electric service.~~ has the same meaning as the term “system emergency” defined in §25.5 of this title. The term includes an emergency declared by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity.

B. Filing Requirements – Proposed 16 TAC § 25.53(c)

1) § 25.53(c)(1) – Initial EOP Filing Date

TNMP suggests that the proposed April 1, 2022 filing date should be revised to ninety (90) days after the Commission adopts a revised rule. Following adoption, TNMP will need some time to prepare a revised EOP and conducting any training. TNMP believes that ninety (90) days after rule adoption will be an appropriate time frame to comply.

2) § 25.53(c)(1)(A) – Filing of EOP in its Entirety

As stated in its general comments, TNMP is concerned that filing an entire, unredacted EOP as contemplated by the proposed rule risks disclosure of sensitive system and operational information. TNMP believes that a better practice would be to modify the concept of permitting the filing of a comprehensive summary contained in the current rule. Therefore, TNMP suggests that the Commission require a utility to either file its entire EOP or a detailed comprehensive summary of its EOP. Any utility filing the comprehensive summary should also be required to make a copy of its entire EOP available to the Commission for review in Austin. This modification would balance the Commission's oversight of emergency preparedness and disclosure of sensitive information.

For each of its non-contiguous service territories, TNMP's EOPs include both critical and sensitive operational information. Critical Energy Infrastructure Information ("CEII"), ERCOT Critical Energy Infrastructure Information ("ECEII"), and/or confidential employee contact information are contained in these EOPs. Notably, Tex. Util. Code § 186.007(a)(1) contemplates that any confidential information should be redacted from what is provided to the Commission. Subsection (f) provides that: "If portions of a plan are designated as confidential, the plan shall be provided to the commission in a redacted form for public inspection with confidential portions removed." Thus, PURA acknowledges the sensitive nature inherent in an EOP. However, given the sensitivity of the EOP information, the risk of disclosure is unnecessarily courted without the option to file a comprehensive summary.

Therefore, TNMP suggests that the subdivision (c)(1) be revised to require a utility to either (i) file its entire EOP or (ii) file a comprehensive detailed summary of the EOP and make available a complete unredacted version of its EOP to the Commission for inspection in Austin. TNMP suggests that subdivision (c)(1) be revised as follows:

- (1) An entity must file an EOP or a comprehensive detailed summary of its EOP under this section and make a complete unredacted copy of the EOP available to the commission for inspection in Austin within 90 days of the Commission's adoption of this rule ~~by April 1, 2022~~. Beginning in 2023, an entity must annually file an EOP or a comprehensive detailed summary of its EOP no later than February 15 in the manner prescribed by the

commission and make a complete unredacted copy of the EOP available to the commission for inspection in Austin.

~~(A) — An entity must file with the commission its unredacted EOP in its entirety and a public, redacted EOP.~~

3) § 25.53(c)(1)(B) – Submitting Unredacted EOP to ERCOT

Per applicable NERC Reliability Standards, ERCOT Nodal Operating Guide 3.7(6) already requires a Transmission Owner to submit to ERCOT by each February 15, its emergency operations plan to mitigate operating emergencies. Therefore, this proposed subsection's requirement to submit an unredacted version of its EOP to ERCOT is duplicative and unnecessary. Plans provided in accordance with Nodal Operating Guide Section 8, Attachment L, Emergency Operations Plan, are not available. These plans, though similar to proposed § 25.53, specifically address how each utility satisfies the requirements of NERC Reliability Standard EOP-011. Since Nodal Operating Guide 3.7(6) already provides ERCOT the information it requires regarding emergency operations, paragraph (c)(1)(B) should be deleted.

4) § 25.53(c)(1)(C) – After-Action Report

Provided that the term “emergency” defined or interpreted consistent with “system emergencies” under 16 TAC § 25.5 (128), TNMP has no objection to this requirement. However, if the definition applied to “emergency” is broader than the current definition of “system emergencies”, TNMP suggests deleting this subparagraph as the number of reports from what are now considered non-emergency outages will result in an unreasonably large administrative burden.

5) § 25.53(c)(4) – Updated Filings

Updated filings of an entity's EOP are addressed section (c)(4) addresses. TNMP suggests Paragraphs (c)(4)(A) and (c)(4)(C) should be modified to provide for the filing of a comprehensive EOP summary as discussed previously. Additionally, TNMP suggests that proposed Paragraph (c)(4)(B) be deleted since any update required by that paragraph would have already been required by paragraph (c)(4)(A). TNMP also suggests that paragraph (c)(4)(D) be deleted based on the prior discussion regarding submissions to ERCOT under

proposed § 25.53(c)(1)(B). Nodal Operating Guide 3.7(6) already provides ERCOT the information it requires regarding emergency operations.

TNMP suggests that Subdivision (c)(4) should be revised to read as follows:

- (4) Updated filings. An entity must file an updated EOP or a comprehensive detailed EOP summary with the commission within 30 days under the following circumstances.
 - (A) An entity must file an updated EOP or a comprehensive detailed summary of its updated EOP and make a complete unredacted copy of the updated EOP available to the commission for inspection if commission staff determines that the entity's EOP or comprehensive detailed EOP summary on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.
 - ~~(B) An entity must file an updated EOP in response to feedback provided from commission staff.~~
 - ~~(B)~~ (C) An entity must file an updated EOP or a comprehensive detailed summary of its updated EOP and make a complete unredacted copy of the updated EOP available to the commission for inspection if the entity makes a significant change to its EOP. A significant change to an EOP includes a change that has a material impact on how the entity would respond to an emergency. The entity must file with the commission the updated EOP or a comprehensive detailed summary of its updated EOP and make a complete unredacted copy of the updated EOP available to the commission for inspection ~~with the commission~~ no later than 30 days after the change takes effect.
 - ~~(D) An entity with operations within the ERCOT power region must submit its updated EOP under paragraphs (c)(4)(A), (c)(4)(B), and (c)(4)(C) to ERCOT within 30 days of filing the updated EOP with the commission.~~

6) § 25.53(c)(5) – ERCOT’s Maintenance of EOP

As previously discussed, Nodal Operating Guide 3.7(6) already provides ERCOT the information it requires regarding emergency operations. Requiring ERCOT to “maintain a current EOP” is unnecessary for ERCOT’s purposes. Further, if utilities that file an entire EOP or a comprehensive EOP summary while making the EOP available to the Commission in Austin, Texas, then there is no need for ERCOT to be a repository of entire EOP’s for commission review. Subdivision (c)(5) should be deleted.

C. Information to be included in the EOP - Proposed 16 TAC § 25.53(d)

1) § 25.53(d)– Information to be included in the EOP

TNMP is concerned that the initial sentence in proposed subsection (d) requires that “both common operational functions that can be used for every type of emergency and annexes that outline the entity’s response to the types of emergencies specified in subsection (e)” be addressed in the EOP. TNMP believes the language is unclear and that an EOP should be designed to address “system emergencies” as defined in § 25.5(128). The current language potentially expands an EOP’s scope to matters that are not consistent with a system emergency. TNMP proposes that the first sentence in subsection (d) be revised to read as follows:

- (d) **Information to be included in the emergency operations plan.** An entity’s EOP must address both ~~common operational functions that can be used in for every type of emergencies~~ y and annexes that outline the entity’s response to the types of emergencies specified in subsection (e).

2) § 25.53(d)(5)(A) – Communication Plan

Proposed subdivision (d)(5)(A) addresses communication plans for utilities. TNMP suggests that the section should clarify that it is limited to plans in place during emergencies. TNMP proposes the following modification:

- (A) An entity with transmission and distribution service operations must describe the procedures during an emergency for handling complaints and for communicating with the public; the media; customers; the commission; local and state governmental entities, officials, and

emergency operations centers; the applicable Reliability Coordinator; and critical load customers directly served during an emergency.

D. Annexes to be included in the EOP - Proposed 16 TAC § 25.53(e)

1) § 25.53(e)(1)(C)(i)- – Load Shed Procedures

TNMP does not oppose describing its load shed procedures in response to proposed subparagraph (e)(1)(C)(i) but believes the phrase “whether caused by planned or forced interruption of service” is not applicable. Though load shedding is considered an emergency event, planned and forced interruptions are typically not incidents that initiate an EOP. Those instances are typically regarded as more routine compared to significant incidents requiring load shed. TNMP believes that subparagraph (e)(1)(C)(i) be revised as follows:

(C) A load shed annex that must include:

- (i) procedures for controlled shedding of load, ~~whether caused by planned or forced interruption of service;~~

2) § 25.53(e)(1)(C)(iii) – Registry of Critical Load Customers

TNMP is concerned that including the list of critical customer names within the load shed plan could be confusing. To begin, not all critical loads are exempt from load shed. TNMP prioritizes critical customers that are determined to be critical to public health or welfare of the community or supporting the integrity of the electric system. Further, load shedding is implemented on a feeder-by-feeder basis and not by individual customer. Additionally, subparagraph (e)(1)(C)(iii) does not clearly identify which “critical load customers” are to be included in the required registry. There are defined “critical loads” under § 25.5(22) and § 25.52(c)(1) and defined “critical load customers” under 16 TAC § 25.52(c)(1) & (2) and § 25.497 as well as Texas Water Code § 13.1396. TNMP believes the rule should be modified to identify which customers are to be included in the registry. Additionally, to avoid confusion in the procedures, TNMP suggests that the critical load customer registry should be included in a separate, dedicated annex.

3) §25.53(e)(1)(G)-(H) & (e)(2)(G)-(H) – Cyber Security and Physical Security Incident Annexes

TNMP is concerned about including the newly proposed cyber security and physical security incident annexes. By their nature both annexes implicate sensitive system and operational data. Furthermore, cyber security and physical security are already subject to existing NERC Reliability Standards that contain complex and rigorous regulation of transmission owners and operators. While a utility addresses such NERC requirements in its internal programs and policies, making the details of such procedures public would undermine grid security as much of the information would be considered CEII. Publication or disclosure of these security processes would create a roadmap for bad actors. TNMP urges the Commission to delete both § 25.53(e)(1)(G) and (H). If the Commission retains these annexes, then a utility should be authorized to only file a summary description of these security measures.

4) § 25.53(e)(2) – Address PURA § 39.918 Generation Facilities

Tex. Util. Code §39.918 permits TDUs to “lease and operate” facilities that provide temporary electric energy to assist power restoration to its distribution customers during a widespread outage. However, proposed §25.53(e)(2) imposes the same requirements on these facilities as it does on standard generation resources. Consequently, a TDU would require TDUs to provide eight annexes that seem to have little relevance given the nature of the Tex. Util. Code §39.918 facilities and the fact that a TDU would have already addressed their requirements and descriptions in its power restoration plans. TNMP urges the Commission to therefore exclude such facilities from this subdivision (e)(2)(A) through (I).

Additionally, since, Tex. Util. Code § 39.918(g) requires a TDU that leases, operates, or owns facilities under § 39.918(b) to include “a detailed plan for the use of those facilities” in its emergency operations plan, TNMP proposes a new subdivision (e)(6) to provide for that requirement. The following edits address TNMP’s issues:

An electric cooperative, an electric utility, or a municipally owned utility that operate a generation resource in Texas; and a PGC must include the following annexes for its generation resources other than generation resources authorized under PURA § 39.918:

* * *

- (6) A transmission and distribution utility that leases or operates facilities under § 39.918(b)(1) or procures, owns, and operates facilities under § 39.918(b)(2) must include an annex that details its plan for the use of those facilities.

E. Drills – Proposed 16 TAC § 25.53(f)

TNMP suggests that the phrase “the same calendar year” replace “the last 12 months” in the proposed § 25.53(f). This edit clarifies that an EOP is either initiated or the subject of a drill every year. The revision would be:

- (f) **Drills.** An entity must conduct or participate in one or more drills annually to test its EOP if its EOP has not been implemented in response to an incident within the same calendar year ~~last 12 months~~.

F. Reporting Requirements – Proposed 16 TAC § 25.53(g)

Significant weather incidents (i.e. hurricanes) can so damage properties that customers’ residences and business are not able to take service for weeks or months. Consequently, this subsection should clarify that updates are not required after service has been restored to all customers capable of receiving service. Ongoing restoration status updates for such impacted customers over the weeks or months their properties are repaired does not appear to provide beneficial information for the customers or the Commission. Consequently, TNMP proposes the following revision:

- (g) **Reporting requirements.** Upon request by commission staff during an activation of the State Operations Center by TDEM, an entity must provide updates on the status of operations, outages, and restoration efforts. Updates must continue until all incident-related outages of customers able to take service are restored or unless otherwise notified by commission staff. After an emergency, commission staff may require an affected entity to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.

III. CONCLUSION

TNMP appreciates the opportunity to comment on the proposed 16 TAC §25.53 in this project. The Commission's time and attention to this matter are greatly appreciated.

Respectfully submitted,

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TEXAS-NEW MEXICO POWER COMPANY'S EXECUTIVE SUMMARY
FOR RESPONSE TO PROPOSAL FOR PUBLICATION

TNMP respectfully believes that public transparency on emergency preparation must be tempered with securing sensitive or critical information from public disclosure.

- **§ 25.53(b)(3)** – “Emergency” revised consistent with should have the same “system emergency” under 16 TAC § 25.5 (128).
- **§ 25.53(c)(1)** - April 1, 2022, filing date should be revised to ninety (90) days after the Commission adopts a revised rule.
- **§ 25.53(c)(1)(A)** – TNMP suggests revision to require a utility to either (i) file its entire EOP or (ii) file a comprehensive detailed summary of the EOP and make available a complete unredacted version of its EOP to the Commission for inspection in Austin.
- **§ 25.53(c)(1)(B)** – Since Nodal Operating Guide 3.7(6) already provides ERCOT the information it requires regarding emergency operations, paragraph (c)(1)(B) should be deleted.
- **§ 25.53(c)(1)(C)** – Provided that the term “emergency” defined or interpreted consistent with “system emergencies” under 16 TAC § 25.5 (128), TNMP has no objection to the “after-action” reporting requirement.
- **§ 25.53(c)(4)** – For filing updates, TNMP suggests revising Paragraph (c)(4) to provide for the filing of a comprehensive EOP summary; deleting Paragraph (c)(4)(B) as redundant; and deleting Paragraph (c)(4)(D) as Nodal Operating Guide 3.7(6) already provides ERCOT the information it requires regarding emergency operations.
- **§ 25.53(c)(5)** – Suggest deleting subsection. Nodal Operating Guide already provides ERCOT required emergency operation information; unnecessary for ERCOT to be repository.
- **§ 25.53(d)**– Revised scope to only effect to operational functions during emergencies.
- **§ 25.53(d)(5)(A)**– Clarify that communication plan limited to emergencies.
- **§ 25.53(e)(1)(C)(i)** – Delete “whether caused by planned or forced interruption of service” as inapplicable to load shed.
- **§ 25.53(e)(1)(C)(iii)** – Suggest Critical Load Customer Registry clarify applicable customers and be included in separate annex.
- **§25.53(e)(1)(G)-(H) & (e)(2)(G)-(H)** – Due to sensitive information, and existing NERC regulation cyber and physical security annexes should be deleted or summary authorized.
- **§ 25.53(e)(2)** –PURA § 39.918 Generation Facilities should be excluded from this subsection and TDU required to address the use where applicable.
- **§ 25.53(f)**– TNMP suggests that the phrase “the same calendar year” replace “the last 12 months” clarifying that an EOP is either initiated or the subject of a drill every year.
- **§ 25.53(g)** - Clarify that updates are not required after service has been restored to all customers capable of receiving service.